

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

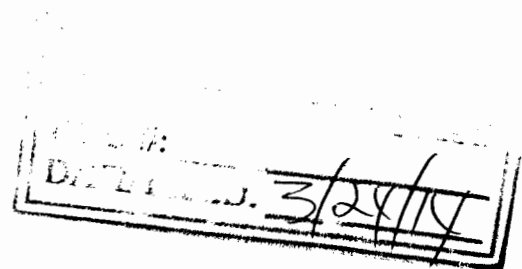
-----X  
TERRENCE MOORE, KEVIN KELLY, JOHN :  
COFFEY, RONALD RICHARDSON, JOHN :  
BRUNETTI, KEVIN O'BRIEN, and MICHAEL :  
CAHILL as Trustees of the METAL :  
LATHERS LOCAL 46 PENSION FUND, METAL :  
LATHERS LOCAL 46 TRUST FUND, METAL :  
LATHERS LOCAL 46 ANNUITY FUND, METAL :  
LATHERS LOCAL 46 VACATION FUND, :  
METAL LATHERS LOCAL 46 APPRENTICESHIP :  
FUND, METAL LATHERS LOCAL 46 :  
SCHOLARSHIP FUND, and METAL LATHERS :  
LOCAL 46 DENTAL FUND; and STEPHEN :  
MCINNIS, MICHAEL CAVANAUGH, PAUL :  
CAPURSO, JOHN SHEEHY, PAUL PYZNER, :  
CHRISTOPHER WALLACE, DAVID MEBERG, :  
KEVIN O'CALLAGHAN, PAUL O'BRIEN, :  
JOHN DELOLLIS, JOSEPH KAMING, and :  
CATHERINE CONDON as Trustees of the :  
NEW YORK CITY DISTRICT COUNCIL OF :  
CARPENTERS PENSION FUND, NEW YORK :  
CITY DISTRICT COUNCIL OF CARPENTERS :  
WELFARE FUND, NEW YORK CITY DISTRICT :  
COUNCIL OF CARPENTERS APPRENTICESHIP :  
JOURNEYMEN RETRAINING, EDUCATIONAL :  
AND INDUSTRY, and NEW YORK CITY :  
DISTRICT COUNCIL OF CARPENTERS :  
ANNUITY FUND, :  
:

Plaintiffs, :

-v- :

RIVER AVENUE CONTRACTING CORP., RNC :  
INDUSTRIES LLC, EXTREME CONCRETE :  
CORP., RICHARD J. TONYES, SONIA :  
TONYES, ROBERT DUGAN, and RICHARD :  
TONYES, JR., :  
:

Defendants. :  
-----X



13 Civ. 4205 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

Trial in this matter was scheduled long ago to begin April 9,  
2014. Nevertheless, on March 17, 2014, defendants applied to adjourn

the trial pending the release from incarceration of defendant Richard J. Tonyes, Sr., who is presently incarcerated at FCI Fort Dix with a release date of February 2, 2015, though he may be released earlier. The Court offered to issue a writ of habeas corpus to transfer Tonyes to the Metropolitan Correctional Center in New York so that he could attend trial daily, testify, and participate in his defense in person.

By letter dated March 20, 2014, which is docketed herewith, defendants' counsel writes that, after consultation, Tonyes requests that the Court not issue the writ, due to an unspecified concern for his personal safety, and acknowledges that his refusal to attend trial may affect his defense. There is no reason known to the Court or provided by Tonyes to believe that MCC presents such safety concerns, so defendants' application to adjourn the trial is accordingly denied.

SO ORDERED.

Dated: New York, NY  
March 21, 2014

  
JED S. RAKOFF, U.S.D.J.

**TRIVELLA & FORTE, LLP**  
**ATTORNEYS AT LAW**  
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March 20, 2014

**VIA MAIL and ELECTONIC MAIL:**

Chambers of the Honorable  
Judge Jed S. Rakoff  
United States Courthouse  
Room 1340  
500 Pearl Street  
New York, NY 10007

Re: Moore v. River Avenue Contracting Corp. 13-cv-4205(JSR)(AJP)

Dear Judge Rakoff:

This office is counsel to the Defendants in the above matter. This letter is sent pursuant to the instructions of Law Clerk Austin King during the telephone conference held March 18, 2014. Previously the Defendant Richard Tonyes, Sr. applied to this Court to adjourn the trial in this matter pending his release from incarceration. Last week the Court declined the application and indicated the Court would issue a writ of *habeas corpus* transferring Mr. Tonyes from his current location of incarceration, Fort Dix Federal Correctional Institution, to Metropolitan Correctional Center, for the purpose of his attendance at the trial on April 9, 2014.

This office advised the Court on March 18, 2014 that, due to Mr. Tonyes' concern for his personal safety regarding the conditions at Metropolitan Correctional Center as opposed to Fort Dix Correctional Institution, Mr. Tonyes unequivocally requests the Court not issue the writ effectuating his transfer to Metropolitan Correctional Center. Mr. Tonyes understands that if the writ does not issue he will not be able to be present for the April 9, 2014 trial and the Court may draw evidentiary inferences from his failure to appear and be present at trial and available for testimony. Mr. Tonyes also understands that, although he reserves the right to apply to the Court to utilize his deposition transcript for direct testimony on the Defendants' Case in Chief, there is a possibility the Court will not permit the use of his deposition testimony during the trial because he failed to appear at trial in person.

Having been apprised of the ramifications of his failure to be present at trial, Mr. Tonyes respectfully, and after having had an opportunity to speak with counsel, requests the Court not issue the writ transferring him to Metropolitan Correctional Center.

Hon. Jed S. Rakoff  
March 20, 2014  
Page 2 of 2.

Very truly yours,

TRIVELLA & FORTE, LLP

***Christopher Smith***

Christopher Smith

CAS/ac

cc: Thomas Kennedy, Esq., (via electronic mail)